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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235
	)	
and	)	
	)	
Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services	)	

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION
AND REQUEST FOR CLARIFICATION

KENWOOD COMMUNICATIONS CORPORATION

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SUMMARY

Kenwood Communications Corporation (Kenwood) submits its Petition for Partial Reconsideration relative to the *Second Report and Order*, FCC 97-61, released March 12, 1997. The Second Report and Order consolidates the PLMR Services, and addresses certain other principal issues, including whether, and under what circumstances, centralized trunking should be permitted in the bands below PLMR bands below 800 MHz. With respect to the rules adopted relative to centralized trunking, Kenwood's concern, and that of large numbers of licensees interested in trunking in the UHF bands, is that, as a practical matter, any authorization of trunking at VHF and UHF which demands as a prerequisite the concurrence of all co-channel and adjacent channel licensees within a fixed radius of the proposed trunked system is likely to be unworkable, especially in urban or metropolitan markets.

Neither, in the view of Kenwood, is such a restriction the least practicable means of avoiding interference to conventional, co-channel or adjacent channel, incumbent licensees. Kenwood requests that the Commission clarify certain issues with respect to centralized and decentralized trunking, and would ask that the Commission revisit the consent requirement established at Paragraphs 56 through 59 of the Second Report and Order, and at Section 90.187 of the Rules, and establish less burdensome requirements for interference avoidance between trunked systems in the bands between 150 and 512 MHz, and conventional, incumbent users on the same or adjacent channels.

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To: The Commission

PETITION FOR PARTIAL RECONSIDERATION
AND REQUEST FOR CLARIFICATION

Kenwood Communications Corporation (Kenwood), by counsel and pursuant to Section 1.429 of the Commission's Rules (47 C.F.R. §1.429), hereby respectfully submits its Petition for Partial Reconsideration relative to the *Second Report and Order*, FCC 97-61, released March 12, 1997. The Second Report and Order consolidates the PLMR Services, and addresses certain other principal issues, including whether, and under what circumstances, centralized trunking should be permitted in the bands below PLMR bands below 800 MHz. It is only that aspect of the Second Report and Order to which this Petition for Partial Reconsideration is addressed. With respect to the rules adopted relative to centralized trunking, Kenwood states as follows:

I. Introduction

1. Kenwood appreciates the Commission's clarification of the rules governing centralized trunking in the bands below 800 MHz, because this issue has not been particularly well understood by licensees in the past. It is agreed by all concerned that licensees should be able to realize the efficiency of trunking in the bands below 800 MHz, while at the same time recognizing the large number of incumbent licensees that must be protected from interference.

2. The difficulty in implementing trunking in those bands in the presence of existing conventional systems is appreciated. Kenwood's concern, however, and that of large numbers of licensees interested in trunking in the UHF bands, is that, as a practical matter, any authorization of trunking at VHF and UHF which demands as a prerequisite the concurrence of all co-channel and adjacent channel licensees within a fixed radius of the proposed trunked system is likely to be unworkable, especially in urban or metropolitan markets. Neither, in the view of Kenwood, is such a restriction the least practicable means of avoiding interference to conventional, co-channel or adjacent channel, incumbent licensees.

3. Kenwood requests that the Commission clarify certain issues with respect to centralized and decentralized trunking, and would ask that the Commission revisit the consent requirement established at Paragraphs 56 through 59 of the Second Report and Order, and at Section 90.187 of the Rules, and establish less burdensome requirements for interference avoidance between trunked systems in

the bands between 150 and 512 MHz, and conventional, incumbent users on the same or adjacent channels.

II. Background

4. It has never been clear in the Commission's Rules, until this Second Report and Order, that centralized trunking was not permitted, because the Commission's Rules were silent on the issue. As the result, numerous licensees heretofore believed that centralized trunking was not prohibited, and therefore was permitted. Some have implemented centralized trunking systems, apparently without interference complaints. However, In 1991, the Commission issued a Notice of Inquiry (NOI) concerning spectrum efficiency in the Land Mobile Radio Bands in use prior to 1968.[1] One of the issues in that document was trunking below 512 MHz. The NOI discussed both centralized and decentralized trunking. The Commission suggested that, if it allowed trunking at UHF, a licensee should be permitted to trunk as many channels as he or she wishes.[2]

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[1] See the *Notice of Inquiry*, 6 FCC Rcd. 4126 (1991).

[2] The NOI referred to systems with dynamic channel reassignment without central management as decentralized trunking. The NOI conceded that the Commission rules were silent on trunked operations on frequencies below 800 MHz, except that at the time of the NOI, the rules governing 220-222 MHz frequencies provided for certain trunked operation. The NOI stated that the reason that the Rules were silent on trunked operation at VHF and UHF was because the rules governing operation on those frequencies were enacted before trunking existed, and not from any intent to prohibit trunking. However, in 1987, the Commission had considered whether to permit trunking on all bands, including shared use bands. The only outcome of that proceeding [*See, the Notice of Inquiry*, PR Docket 87-213, 2 FCC Rcd. 3820 (1987)] was a decision to grant

5. In the November 6, 1992 *Notice of Proposed Rule Making* in this proceeding,[3] the Commission again addressed UHF trunking as follows:

> A trunked system is a multi-channel system in which a user can transmit on any of the channels through specific base station facilities. The system automatically searches for and assigns a user an open channel assigned to that system. Trunked technology provides significantly more efficient use of the radio spectrum in terms of the number of users that can be supported. (footnote omitted). Centralized trunking is not currently permitted in the bands below 800 MHz. The vast majority of commenters favor permitting centralized trunking when a licensee has at least *de facto* exclusivity. Thus, we propose that centralized trunking immediately be explicitly permitted where exclusivity is recognized by the Commission when all co-channel licensees within 50 miles concur.
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> 7 FCC Rcd. at 8114.

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authority to trunk on certain 800 MHz channels. Again, however, there was no specific prohibition enacted with respect to centralized trunking. The ultimate conclusion contained in the NOI was as follows:

> Thus, we now consider two types of trunked operation. Traditional trunking is prohibited by policy below 800 MHz and requires exclusive channel assignments. The new decentralized type uses monitoring, is not prohibited, and does not require exclusive channel assignments.
>
> 6 FCC Rcd. at 4130.

This is the essence of the Commission's definition of decentralized trunking: that where monitoring is involved, it is not centralized trunking. It is unclear from this, relative to centralized trunking, what "prohibited by policy" means, where there were no rules at all at the time governing VHF and UHF trunking, and according to the NOI, the silence of the rules was specifically not intended to signal a policy of prohibiting trunking in those bands.

[3] *Notice of Proposed Rule Making*, 7 FCC Rcd. 8105 (1992).

A footnote to that quoted segment stated that decentralized trunking is, and would continue to be permitted. No more specific distinction was created.

6. In the Second Report and Order, the Commission stated that centralized trunking uses multiple channel pairs in conjunction with a computer which automatically assigns a user the first available channel or places the user in a queue to be served in turn, and that *no channel monitoring is involved.*[4] The further notice addressed the issue of exclusivity. The exclusivity issue was related because of the lack of monitoring of a channel in centralized trunking, which therefore works better when there is channel exclusivity.

7. To realize the efficiencies of centralized trunking below 800 MHz, the Second Report and Order permitted such for licensees at 150-174 MHz, 421-430 MHz (Above Line A), 450-470 MHz, and 470-512 MHz, provided that:

> (1) the applicant first obtain the consent of all licensees whose service areas overlap a circle with a radius of 70 miles from the trunked system's base station; and whose operating frequency is 15 kHz or less removed from a 25 kHz channel system; 7.5 kHz or less removed from a 12.5 kHz trunked system or 3.75 kHz or less removed from a 6.25 kHz trunked system; and
>
> (2) the licensee complies with all frequency coordination requirements.

[4] See, the *Second Report and Order*, at footnote 143, *citing the Report and Order*, 10 FCC Rcd. at 10133-136.

Statements setting forth the "terms" of such agreements[5] must be forwarded to the frequency coordinator, and also to the Commission as an attachment to the license application or modification. Though the Second Report and Order discusses no alternative to the consent requirement, the Rules adopted state that an engineering showing could be prepared in lieu of such consents, which would demonstrate that the service area of the trunked system does not overlap any existing stations whose service areas overlap a circle with a 70-mile radius of the proposed trunked base station. Furthermore, the rule states [§90.187(b)(2)(iii)] that *all* of the co-channel and adjacent channel licensees must consent.

III. The Consent Requirement is Impractical and Unworkable

8. As noted above, the Commission is to be commended for clarifying its intention, and the rules, with respect to VHF and UHF trunking. Because of the confusion resulting from the previous silence of the rules on UHF trunking especially, there are some systems now in operation that, strictly interpreted, are centralized trunked systems. However, the Commission's intent, to promote the use of efficient trunked systems at VHF and UHF, cannot be realized with the current consent requirement, except in the most rural environments. The strict consent requirement is unworkable in the extreme in any urbanized or metropolitan area.

9. First of all, there is no incentive whatsoever for an incumbent, co-channel or adjacent channel conventional licensee to

[5] There is no indication what those "terms" may or may not include.

consent to the use of trunked channels by an applicant for a new or modified trunked system. In fact, the incentive would be exactly the opposite; fear of interference would cause incumbent licensees to favor the *status quo*. There is the incentive to demand consideration from licensees proposing trunked operation in exchange for consent, and the possibility of withholding consent in the absence of such consideration makes the likelihood of unanimous consent minimal indeed. Second, the requirement of unanimous consent fails to take into account the presence of significant numbers of "paper licensees" who either no longer use their licensed channels because they have relocated, gone out of business, or found alternative communications providers; or who never constructed them in the first place, and who therefore may not be reachable by a trunking proponent. Third, the requirement of unanimity in consent of licensees makes it possible for one or two licensees, without any real potential for interference, to frustrate the intentions of the trunking proponent, notwithstanding receipt of consents from most of the co-channel and adjacent channel licensees. Finally, the determination of the identity of those co-channel and adjacent channel licensees must be done through a database search. Whether provided by the coordinator, or by a private database service, there is the possibility of an unintentional omission in obtained consents, even if such are available. The requirement of unanimity of consent would place the trunking proponent in a position of strict liability for errors or omissions, and threaten to make continued trunking impossible

notwithstanding significant investment in system hardware, in the presence of a complaint that a licensee was not consulted.

10. All of the foregoing leads to the inevitable conclusion that a greater degree of flexibility must be incorporated into the rules, either by reducing the extent of the consent requirement, or by providing alternatives. An alternative must continue to place responsibility for interference avoidance on the trunking proponent, but at the same time allow that licensee some flexibility in determining the actual interference potential in shared bands to incumbent licensees. There are various methods for doing this.

IV. Alternatives to Unanimous Consent Requirements

11. It is common practice for applicants for shared UHF conventional channels in urbanized markets, recognizing that there is, unfortunately, a significant number of unconstructed licensed systems, to monitor channels from existing or proposed base facilities for significant periods of time prior to filing an application, in order to determine the actual extent of channel use. Then, upon application to a coordinator for that channel, if the coordinator finds geographically proximate licensees, the applicant can simply certify to the coordinator that it has conducted monitoring studies for a period of weeks, and has determined that there will not as the result be interference to any incumbent licensee. Though this does not provide absolute assurance that there will not be interference at a later date on the shared channels, it allows the applicant to make its own determination,

while remaining accountable for that determination. The same procedures can be utilized, it would seem, by applicants for new or modified licenses for centralized trunked systems. At the very least, monitoring could be used, periodically if necessary,[6] as a means of establishing that a particular licensee on the same or an adjacent channel who cannot be reached for consent or who refuses to consent to trunking is not, in fact, actually using the channel or channels at issue.

12. Because of the coordination requirement for new or modified trunked VHF or UHF systems, it would seem that the filing of consents with the Commission stating the "terms" of consents would be surplusage, or at least overregulation in this context. There are certain procedures that have developed between coordinators and applicants that work well as a substitute for Commission regulation, and they should be left to work without additional Commission regulation. If those procedures apply to trunking, it should be sufficient that the Commission requires coordination of applications for VHF or UHF trunking, without more.

13. Other, less-burdensome alternatives to the 70-mile station radius consent requirement exist. For example, applicants seeking to implement a centralized trunked system could be permitted to notify a frequency coordinator that they plan to obtain consent to trunking from licensees on a maximum of 20 channels. The applicant

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[6] Extended monitoring at the outset, prior to commencement of trunked operation, could be coupled with additional periods of monitoring on a seasonal basis, could be used to address "seasonal" users of channels, such as beach patrols, ski lift operators, and the like.

would then have a limited period, for example, 120 days, to obtain consent from incumbent licensees, during which time any other applications for the channels would be coordinated and processed only on the condition that those subsequent applicants consent to the trunked system, provided that the necessary consents (which should be some less-than-unanimous percentage of those co-channel licensees within a particular geographic radius of the trunked base station) are eventually obtained. Any frequency for which the applicant does not obtain the required consents, and for which it therefore cannot file an application within that time become available for other applicants. Once the application is filed, the non-cleared channels would be released for other applications, even if the full 120 days has not expired. Under the circumstances, there should be a construction period for the trunked system, for example, one year, and construction would have to be completed before any addition of trunked channels.

14. In any event, the consent area should be reduced. Consent should be required from co-channel and adjacent channel systems whose 37 or 39 dBu service contour overlaps the proposed trunked station's 22 dBu contour. Propagation studies should determine the contour analysis, and the maximum radius for consent requirements. The current, blanket 70-mile radius does not determine the actual interference potential of trunked systems to incumbent co-channel and adjacent channel licensees, and at the very least, and alternative calculation method should be available to licensees who wish to conduct their own interference calculations based on

accepted distance-to-contour formulas, terrain shielding factors, and computer modeling.

15. Finally, the consent requirement, if any need remain, should be eliminated with respect to adjacent-channel licensees. The co-channel licensees' consent should be sufficient to protect against interference. Coordinators will use standardized separation criteria to protect adjacent channel licensees, and the trunking of channels should have no relevance to an adjacent channel licensee. It is understood that, in the future, mixture of 25 kHz, 12.5 kHz, and 6.25 kHz channel users will occur. However, this is not a sufficient basis for the highly restrictive adjacent-channel consent requirement. The licensee should be able to simply certify that no interference is calculated to be due to any adjacent channel licensee, and the burden of interference resolution with respect to any adjacent channel licensee from a trunked UHF or VHF operation should remain with the trunked licensee. In any case, it makes no sense at all to require the consent of adjacent channel licensees at the same mileage limits as those for co-channel licensees.

V. Clarification Issues

16. In order to allow trunking proponents at UHF and VHF to establish systems and develop interference avoidance techniques, and to minimize confusion, the Commission should confirm simply that *a trunked system with centralized architecture and which has monitoring capability is classified as a decentralized system*; and therefore, for such systems, Section 90.187 consent requirements do

not apply. The new Section 90.187 of the Rules does not distinguish between centralized and non-centralized trunking. Because the Commission's intention is specifically that the rules, especially those governing consent, apply only to centralized trunking, there should be a specific exemption for decentralized trunking in Section 90.187, or by clarification.

17. As to the circumstances following implementation of a trunked system, the rules currently provide that co-channel licensees will be granted licenses conditioned on consent to a previously authorized trunked system. However, that same condition should be extended to subsequent licensees on those channels for which consent to trunk was required of the trunking proponent initially (which would include applicants for adjacent channels, if the consent requirement to establish centralized trunking systems from adjacent channel licensees remains). Fundamental fairness to the applicant for trunking demands no less protection after a trunked system has been authorized.

VI. Conclusions

18. The Commission is to be commended for its authorization of trunking in the VHF and UHF PLMR Service bands, and clarification of the rules accordingly. It is understood that the accommodation of centralized trunking is not a simple matter, due to the heavy use of the bands by incumbent licensees. However, it cannot be the Commission's intention to permit VHF and UHF trunking, only to have it prohibited *de facto* by the procedures for consent of co-channel and adjacent channel licensees. In fact, Kenwood suggests that the

regulations are overly burdensome and can be relaxed without significant risk of interference to conventional incumbent licensees. Furthermore, the Commission should clarify its definition of decentralized trunking, to encourage the use of channel monitoring provisions sufficient to exempt those trunked systems from any consent or engineering showings prior to implementation. Finally, the Commission should distinguish in its new rules between centralized and decentralized trunking, as the regulations applicable to the former have no application to the latter.

Therefore, the foregoing considered, Kenwood Communications Corporation respectfully requests that the Commission reconsider, revise and clarify the VHF and UHF trunking regulations set forth in the Second Report and Order in accordance with the foregoing.

Respectfully submitted,

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